

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLENN R. PRUDEN
Supervising Deputy Attorney General
3 RONALD S. MATTHIAS
Senior Assistant Attorney General
4 State Bar No. 104684
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5858
6 Fax: (415) 703-1234
E-mail: Ronald.Matthias@doj.ca.gov
7 *Attorneys for Respondent Robert K. Wong*

8 MICHAEL LAURENCE
Habeas Corpus Resource Center
9 303 Second Street, Suite 400 South
San Francisco, CA 94107
10 Telephone: (415) 348-3800
Fax: (415) 348-3873
11 Mlaurence@hcrc.ca.gov
docketing@hcrc.gov
12 *Attorneys for Petitioner Troy A. Ashmus*

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NOTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 **TROY ADAM ASHMUS,**

18 Petitioner,

19 v.
20

21 **ROBERT K. WONG, Acting Warden of**
22 **San Quentin State Prison,**

23 Respondent.

CAPITAL CASE

C 93-0594 TEH

STIPULATION AND ~~PROPOSED~~
ORDER

Date: January 19, 2010
Time: To Be Set
Courtroom: Courtroom 12, San Francisco
Judge: Honorable Thelton E. Henderson

24
25 The parties hereby stipulate to the following schedule:

26 1. On or before March 2, 2009, petitioner will (i) provide to respondent any non-
27 privileged and relevant material from Mr. Richard Fathy's trial file and billing records that has
28 not yet been produced to respondent, (ii) provide to respondent and the Court a privilege log

1 specifying any material petitioner proposes to withhold other than those materials as to which the
2 Court has already authorized non-disclosure, and (iii) provide to the Court those portions of the
3 defense file which petitioner has withheld from respondent for the Court's in camera review. All
4 material disclosed to respondent is protected by this Court's Order Granting Motion to Compel &
5 Protective Orders & Scheduling Order, filed April 27, 2005.

6 2. On or before July 8, 2009, petitioner shall determine whether he intends to call Richard
7 Fathy, Michael Arkelian, or John Smith to testify at the evidentiary hearing, and if he does,
8 petitioner shall, on or before that same date, prepare and submit a declaration from each
9 summarizing his proposed testimony.

10 3. On or before August 10, 2009, respondent shall determine whether he intends to depose
11 Richard Fathy, Michael Arkelian, or John Smith, and if he does, respondent shall, on or before
12 that same date, notice any deposition he intends to conduct of each on dates mutually agreed upon
13 by the deponent(s) and counsel for the parties. Petitioner's agreement to the dates on which any
14 of the foregoing depositions are noticed is made without prejudice to his right to move to quash
15 any such deposition on whatever grounds petitioner sees fit. Also, on or before August 10, 2009,
16 petitioner shall determine whether he intends to call any mental health expert witness(es) to
17 testify at the evidentiary hearing, and if he does, petitioner shall, on or before that same date,
18 furnish respondent with a report containing a complete statement of all opinions the witness(es)
19 will express and the basis and reasons for them, the data or other information considered by the
20 witness in forming those opinions, and any exhibits that he or she proposes to be used to
21 summarize or support the opinions.

22 4. On or before September 8, 2009, respondent shall determine whether further discovery
23 relating to petitioner's proposed expert testimony is indicated, including but not limited to a
24 mental examination of petitioner to be performed by an expert appointed by the Court, an expert
25 retained by respondent, or both, and if he does, respondent shall seek leave therefor on or before
26 that same date.

27 5. On or before October 21, 2009, petitioner shall file an amended version of the Joint
28 Factual Statement (Doc. 368), annotated to reflect the evidentiary sources upon which he intends

1 to rely when attempting to demonstrate the truth of each factual assertion set forth therein. Also,
2 on or before October 21, 2009, (i) the parties shall exchange and lodged with the Court copies of
3 all declarations in lieu of the direct testimony of all persons and all exhibits proposed to be used
4 at the evidentiary hearing and witness and exhibit lists, and if either party's list includes any
5 experts, they shall, on or before that same date, also furnish the other party with a report
6 containing a complete statement of all opinions the witness(es) will express and the basis and
7 reasons for them, the data or other information considered by the witness(es) in forming their
8 opinions, and any exhibits that he or she proposes to be used to summarize or support the
9 opinions, and (ii) petitioner shall deposit with the Court the complete copy of the defense's trial
10 file. (Petitioner shall maintain the original file in its original condition, and shall make it
11 available to the Court continuously throughout the duration of the hearing and thereafter for as
12 long as the Court directs.)

13 6. On or before November 20, 2009, respondent shall file a reply to petitioner's amended
14 version of the Joint Factual Statement (Doc. 368), annotated to reflect (i) any additional
15 evidentiary sources upon which he intends to rely when attempting to demonstrate the truth of
16 each factual assertion set forth therein, and (ii) with respect to any factual assertions advanced by
17 petitioner that respondent intends to dispute, the bases for such disputation. Also, on or before
18 November 20, 2009, to the extent that either party believes that the other party's submission on
19 October 21, 2009, require the presentation of additional witnesses and/or exhibits, the party or
20 parties shall file the declarations in lieu of the direct testimony of any persons and any additional
21 exhibits proposed to be used at the evidentiary hearing and updated final witness and exhibit lists.

22 7. On or before November 24, 2009, the parties shall file with the Court a notice
23 designating which witnesses they intend to cross-examine at the evidentiary hearing. The parties
24 are not to require the attendance of any witness unless there exists a good faith basis to dispute his
25 or her testimony.

26 8. The evidentiary hearing will be conducted from _____ .m. until _____ .m.,
27 beginning on Tuesday, January 19, 2010, and continue through Friday, January 29, 2010, except
28 for Saturday and Sunday.

1 DATED: February 24, 2009

/s/ Michael Laurence

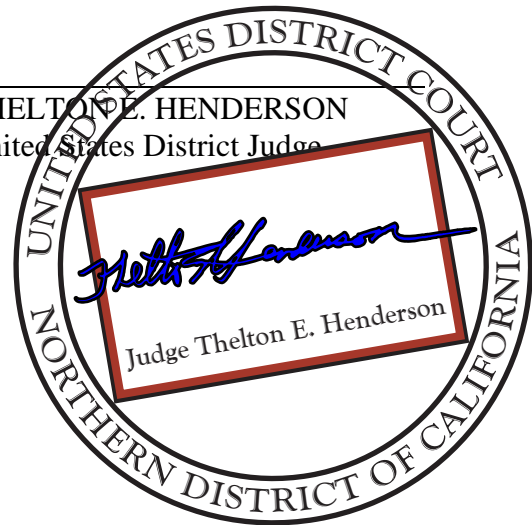
3 DATED: February 24, 2009

/s/ Ronald S. Matthias

5 PURSUANT TO STIPULATION, IT IS SO ORDERED.

7
8 DATED: 03/10/09

THELTON E. HENDERSON
United States District Judge



11 Submitted by:

12 /s/ Ronald S. Matthias
13 RONALD S. MATTHIAS

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